

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: SB 288

INTRODUCER: Senator Margolis

SUBJECT: Older Adults Involved in the Criminal Justice System

DATE: January 13, 2006

REVISED: 2/7/2006

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Goltry</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/ 2 amendments</u>
2.	<u></u>	<u></u>	<u>CJ</u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Senate Bill 288 directs the Department of Elderly Affairs (DOEA) to establish a workgroup to study issues concerning the involvement of adults over the age of 60 with the criminal justice system, with particular emphasis on persons over age 70. The bill specifies the areas that are to be addressed by the workgroup as a part of the study.

This bill provides for the composition of the workgroup and requires all costs of a member's participation to be borne by the agency or organization that appointed the member. Members of the workgroup are entitled to receive reimbursement for per diem and travel. The Secretary of DOEA, or his or her designee, is directed to serve as chairman and to provide for the support of the workgroup.

The workgroup is directed to complete a report of its findings and make recommendations for proposed legislation if any is warranted. This report must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the appropriate substantive committees no later than January 31, 2007.

If approved, this act takes effect on July 1, 2006.

This bill creates an undesignated section of law.

II. Present Situation:

Of the 17.5 million residents in Florida, 23 percent (3.9 million) are over the age of 60. Florida, the fourth largest state, ranks number one among the states in the percentage of its residents who are over the age of 60. Since 1990, Florida's elder population has increased by almost one million – a 29 percent increase.¹

As their numbers increase, a growing number of older adults are becoming involved with the criminal justice system.² There are reports of older adults suffering from dementia or some other type of mental health condition being arrested and taken into custody, the aggression and confusion that are symptoms of these diseases being mistaken for criminal behavior. Elder advocates have expressed concern that with a growing elder population, there will continue to be an increase in these types of arrests.

The justice system is ill-equipped to deal with these types of cases. Police, prosecutors, and judges struggle to balance the humane treatment of this elderly population against the need to protect the public. It is also difficult to determine when older individuals who are experiencing a mental decline are no longer culpable for their actions.

Individuals who suffer from dementia and other types of age-related mental impairment appear to deteriorate more rapidly under the stress of incarceration. Advocates for the aging believe there is a need to change the provisions of current law in order to improve the chances that older adults who are mentally impaired will receive treatment rather than go to jail. The number of older adults who are experiencing deteriorating mental capacity which results in their involvement with the criminal justice system is unknown.

Criminal Proceedings

Chapter 901, F.S., specifies the requirements of or criminal procedures relating to arrests but does not provide for special procedures based upon the individual's age or age-related disabilities. However, s. 901.215, F.S., does provide that any "arresting officer shall, when arresting any person who appears to be inebriated, intoxicated, or not in control of his or her physical functions, examine such person to ascertain whether or not the person is wearing a medic-alert bracelet or necklace or has upon his or her person some other visible identifying device which would specifically delineate a medical disability which would account for the actions of such person. Any arresting officer who does, in fact, discover such identifying device upon such person shall take immediate steps to aid the afflicted person in receiving medication or other treatment for his or her disability."³

In addition, s. 907.041(3)(b)(1), F.S., authorizes the non-monetary release of an accused individual based on the person's mental condition unless that individual has been charged with a dangerous crime. Section 907.04(4)(d), F.S., requires that when an individual is charged with a crime for which pre-trial intervention could be ordered, the arresting agency must notify the state

¹ Florida Department of Elderly Affairs, Long-Range Program Plan For Fiscal Years 2006-2007 Through 2010-2011, September 2005.

² The Center on Aging, Stempel School of Public Health and Urban Affairs, Florida International University, http://www.fiu.edu/~coa/research/elder_justice.html, January 23, 2006.

³ s. 901.215, F.S.

attorney of the arrest. Under the provisions of this section, the defendant may be held for up to five days until a hearing is conducted. During the time spent awaiting a hearing, an older adult may experience a significant deterioration in his or her physical and mental condition.

Persons with Mental Illnesses

Provisions for mentally deficient and mentally ill defendants who are charged with committing felonies are specified under ch. 916, F.S. This chapter specifies requirements for expert training that may be completed by certain professionals who evaluate a defendant's competency to proceed, provides for the court appointment of these experts, identifies who these experts may be, specifies the criteria that must be considered by an expert when determining whether or not an individual is competent to proceed, and provides for the commitment of individuals meeting certain criteria. Currently, individuals who are declared incompetent to proceed or not guilty by reason of insanity may be held in jail for up to 15 days while awaiting placement. Although the forensic mental health program attempts to divert or to identify alternative placements for older adults, it is not always possible to do so.

Section 394.462, F.S., (The Baker Act) provides that if an officer has custody of a person, based on either non-criminal or minor criminal behavior, who meets the statutory guidelines for involuntary examination, the officer must transport the person to the nearest receiving facility for examination. Persons who are arrested for felony offenses must first be processed in the same manner as any other criminal detainee. While receiving facilities are not required to admit a person who is charged with a crime if the facility cannot provide adequate security, the facility is required to provide mental health examination and treatment to the person where he or she is held.

Department of Elderly Affairs

The Department of Elderly Affairs' duties and responsibilities in the area of aging research include the review and coordination of "aging research plans of all state agencies to ensure the conformance of research objectives to issues and needs addressed in the master plan for policies and programs related to aging. The research activities that must be reviewed and coordinated by the department include, but are not limited to, contracts with academic institutions, development of educational and training curriculums, Alzheimer's disease and other medical research, studies of long-term care and other personal assistance needs, and design of adaptive or modified living environments."⁴

The Department of Elderly Affairs administers the Elder Abuse, Neglect and Exploitation Prevention program funded through the Older Americans Act. As a result of collaborating and partnering with other state and federal organizations, including the Adult Protective Services program at the Department of Children and Family Services, the Florida Department of Law Enforcement, and the Attorney General's Office, DOEA has developed educational materials, training curricula and other materials for use in carrying out the program goals which include:

- Providing for public education and outreach to identify and prevent elder abuse, neglect and exploitation;

⁴ s. 430.04 (8), F.S.

- Ensuring the coordination of services provided through area agencies on aging with services instituted under Adult Protective Services (APS), state and local law enforcement systems, and the courts;
- Promoting the development of information and data systems to quantify the extent of elder abuse, neglect and exploitation in the state;
- Conducting analyses of state information concerning elder abuse, neglect and exploitation and identifying unmet service, enforcement or intervention needs;
- Conducting training for individuals, including caregivers, professionals, and paraprofessionals, on identification, prevention and treatment of elder abuse, with particular focus on prevention and enhancement of self-determination and autonomy; and
- Providing technical assistance and training to programs that provide, or have the potential to provide, services for victims of elder abuse, neglect and exploitation and for family members of victims.⁵

The department also provides leadership and support to area agencies on aging in the development and strengthening of programs at the local level and is the lead agency in the statewide Triad initiative. Triad is a partnership of law enforcement, seniors and community groups working together to provide education, awareness and enhanced delivery of crime prevention services to older Floridians.

III. Effect of Proposed Changes:

Senate Bill 288 directs DOEA to establish a workgroup to study the involvement of older adults age 60 and above with the criminal justice system. Particular emphasis is to be placed on older adults age 70 and above. This bill specifies that the study must:

- Determine the extent to which older adults who are alleged to have committed crimes are arrested and the impact of arrest on older adults and on state law enforcement and the criminal justice system;
- Examine the incidence of and issues surrounding older adults with dementia or other mental health or physical health conditions and determine how these conditions affect their involvement with the criminal justice system;
- Determine the extent to which current programs including, but not limited to, the community and forensic mental health, substance abuse, and domestic violence systems and specialty courts are addressing the issues experienced by older adults involved in the criminal justice system;
- Determine the unmet health, mental health, and other social service needs of individuals who are arrested which, if met, would result in the reduced arrest or incarceration of these individuals as well as reduced recidivism;
- Determine the state's current capacity to provide for early identification of older adults who are arrested and who have significant medical issues or mental health conditions and the state's current ability to respond in a meaningful and timely manner to these issues;
- Gather information on private and public model programs within Florida and in other states that offer elements that should be expanded in this state or applied statewide;

⁵ Department of Elderly Affairs, 2006 Legislative Bill Analysis, Senate Bill 288, December 15, 2005.

- Explore the concept of an elder court system and determine the feasibility and advisability of establishing this type of specialty court;
- Evaluate the training provided to staff of state and local agencies most likely to come in contact with older adults in the criminal justice system and assess its adequacy in preparing them to deal effectively with older adults; and,
- Identify the services and best practices which, if implemented, would ensure the early identification, assessment, treatment, and diversion of older adults who are arrested and ensure more effective use of available resources;
- Specify, to the extent possible, the costs associated with such services and best practices that are identified by the workgroup and identify possible public and private sources of revenue to address those costs.

This bill provides that the workgroup must be composed of 13 members and specifies the membership of the workgroup. The costs of a member's participation on the workgroup are to be borne by the agency or organization that appointed the member. Members of the workgroup are allowed to receive per diem and travel reimbursement as provided in s. 112.061, F.S. The Secretary of DOEA, or his or her designee, is directed to serve as chairman and to provide for the support of the workgroup.

The workgroup is directed to complete a report of its findings and make recommendations for proposed legislation if any is warranted. This report must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the appropriate substantive committees no later than January 31, 2007.

The study conducted by this workgroup should result in the collection of information that is needed to identify the services and treatment that are needed by older adults who become involved in the criminal justice system. This information may be used to help reduce the inappropriate arrest and incarceration of elders suffering from dementia or other mental health or physical conditions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:**C. Government Sector Impact:**

This bill may have a fiscal impact on DOEA as the use of existing resources and staff will be required to support the workgroup and prepare the report. The department indicates that DOEA's full-time staff is traditionally involved in service delivery and support, rather than the broad research activities as described in this bill and that travel and per diem is authorized but the bill does not provide an appropriation.

VI. Technical Deficiencies:

The bill has an effective date of July 1, 2006, and requires the submission of report by a 13 member workgroup by January 1, 2007. It is unlikely that the convening of a workgroup, extensive research, and preparation of the report required by the bill could be completed in this length of time.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode #.975006 by Children and Families increases the membership of the workgroup from 13 to 15 members by adding the Secretary of Corrections and a clinical psychologist.

Barcode # 694074 by Children and Families changes the date the workgroup report is due to the Legislature from January 31, 2007 to December 1, 2007.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
